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February 5, 2024

**By ECF**

Hon. Vernon S. Broderick  
United States District Judge  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square, Courtroom 518  
New York, NY 10007

*Comm'r of the New York City Dep't of Soc. Servs. v. Buckeye Coach LLC et al.,  
1:24-cv-00326-VSB*

Dear Judge Broderick:

On behalf of the Plaintiff Commissioner of the New York City  
Department of Social Services, we write in response to the Supplemental Letter Brief

filed by sixteen of the seventeen Defendants (“Defendants”) shortly before Plaintiff’s reply papers were due today. Dkt. No. 29.

Defendants purport to supplement their January 31, 2024 Opposition to Plaintiff’s Application for a Preliminary Injunction (Dkt. No. 22), but put forward no authority for doing so. Indeed, the Federal Rules of Civil Procedure do not provide for supplemental or sur-reply briefs. And Your Honor’s Individual Rules & Practices in Civil Cases specifically provide that any “[s]ur-reply memoranda will not be accepted without prior permission of the Court.” Your Honor’s Individual Rules & Practices in Civil Cases Rule 4.B. Having not sought such permission, Defendants’ Supplemental Letter Brief should be rejected.

Even if Defendants had sought prior permission of the Court, supplementation still is not warranted here because nothing new has occurred since January 31, 2024, when Defendants filed their opposition. Defendants’ Supplemental Letter Brief purports to bring the Court’s attention to the decision in *Herkert v. State*, 197 N.Y.S.3d 879, 2023 N.Y. Slip Op. 23295 (N.Y. Sup. Ct. Richmond Cty. Sept. 23, 2023), but that decision was issued more than four months ago, and in any event has no bearing on the facts at issue in Plaintiffs’ motion.

Defendants’ Supplemental Letter Brief also continues to ignore the well-settled authority cited in Plaintiff’s motion, which makes plain that “requiring a party seeking a statutorily-sanctioned injunction to make an additional showing of irreparable harm . . . is not required.” *City of N.Y. v. Golden Feather Smoke Shop, Inc.*, 597 F.3d 115, 121 (2d Cir. 2010); *see also City of New York v. Beam Bike Corp.*, 206 A.D.3d 447, 447–48 (1st Dep’t 2022); *People v. Apple Health & Sports Clubs*, 174 A.D.2d 438, 438–39 (1st Dep’t 1991), *aff’d* 80 N.Y.2d 803 (1992); *County of Westchester v. United Water New Rochelle*, 32 A.D.3d 979, 980 (2d Dep’t 2006). Nevertheless, as she explained in her main and reply briefs, Plaintiff Commissioner has established irreparable harm. An after-the-fact monetary award will provide cold comfort to New York City residents who are affected right now by the impact on the New York City budget if the Defendants continue to implement the Texas Governor’s plan to shift costs to New York in order to force a change in national immigration policy.

Finally, these Defendants also claim, for the first time, that Plaintiff Commissioner cannot establish any harm because there is no right to shelter and New York City has voluntarily taken on the task of providing shelter to the more than 33,600 individuals Defendants have transported from Texas to implement the Texas Governor’s plan. Given the lengthy and extensive litigation involving right to shelter issues, counsel for the Plaintiff Commissioner would be happy to address any questions that Your Honor may have with respect to the right to shelter in New York.

Accordingly, if this matter is not remanded for the reasons set forth in Plaintiff’s January 31, 2024 letter, Plaintiff Commissioner requests that this Court schedule a hearing and grant the requested injunctive relief. We are also available for a conference to address any questions or concerns Your Honor may have.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP  
Hon. Vernon S. Broderick

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Thank you for your consideration.

Respectfully,

/s/ Steven Banks

Steven Banks  
Counsel for the Plaintiff Commissioner

cc: Michele Hirshman, Darren Johnson, and Katherine Stewart, Paul, Weiss Rifkind & Garrison LLP

Muriel Goode-Trufant, First Assistant Corporation Counsel, New York City Law Department

All Counsel of Record for Defendants